INSPECTOR-GENERAL OF POLICE & ANOR. v. ALAN NOOR BIN KAMAT

[S.C. (Salleh Abas L.P., Wan Suleiman & Syed Agil Barakbah S.C. JJ.) January 8 & May 20, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 310 of 1986]

Constitutional Law – Reduction in rank of police officer – Statement in writing sent on direction of Deputy Inspector-General of Police – Whether sent by proper disciplinary authority – Whether police officer's attention directed to possibility of punishment of reduction in rank – General Orders, Cap. D, 27-30 – Federal Constitution, art. 135(2).

Administrative Law – Reduction in rank of police officer – Compliance with General Orders, Cap. D – Whether punishment valid – General Orders, Cap. D, 27-30 – Federal Constitution, art. 135(2).

Evidence – Admission of oral evidence where matter is required by law to be reduced in the form of a document to contradict, vary or explain the terms of such document – Evidence Act 1950, ss. 91 & 92.

The respondent, a probationary police inspector, received a letter from the Penolong Pengarah Pengurusan (Tatatertib) on behalf of the Deputy Inspector-General of Police alleging that he was guilty of three instances of irresponsible conduct relating to his work as an investigating officer. The letter required him to give an explanation against the allegations. There was nothing in the letter which showed that the disciplinary authority intended or contemplated the punishment of reduction in rank. On receipt of the letter, the respondent wrote his reply giving his explanation to the allegations. After a lapse of more than one year, he was informed that his explanation had not been accepted and that as a punishment he was demoted to his former rank of police constable plus a total fine of three days' salary. He instituted a suit for wrongful dismissal claiming that the punishments inflicted upon him were null and void because the proceedings were not carried out in compliance with the rules of natural justice. The learned trial judge gave judgment for the respondent and the appellants appealed.

Held, dismissing the appeal: (1) the proper disciplinary authority in this case was the Inspector-General of Police and as the show cause letter was issued on the direction not of the Inspector-General of Police but of the Deputy Inspector-General of Police, the requirement of General Orders, Chapter D, 30 was not complied with;

(2) oral evidence should not have been acted upon because it is clear that under section 91 of the Evidence Act, no evidence can be given in proof of any matter which is required by law to be reduced in the form of a document and section 92 prohibits the giving of oral evidence to contradict or vary or explain the terms of such document;

(3) as the show cause letter did not direct the respondent's attention to the possibility of the punishment of reduction in rank, it has not sufficiently complied with the requirements of paragraph (2) of General Orders, Chapter D, 30;

(4) if the show cause letter had included the proposed punishment, there is no necessity for the appellants to give the respondent another opportunity of being heard before the punishment is imposed;

(5) in the circumstances, it was too late for the appellants to make any rectification as the matter having been fought all the way though the court system has already become *res judicata*.

SUPREME COURT.

P. Mahalingam (Senior Federal Counsel); *Mohd Rauff bin Nabi Box* (Senior Federal Counsel) with him for the appellants.

Karpal Singh for the respondent.

Cur. Adv. Vult.

Salleh Abas L.P. (delivering the judgment of the court): The respondent joined the Royal Malaysian Police Force as a constable in 1969. He was promoted to a probationary police inspector in 1976. Whilst serving in Seremban as an investigating officer, he received a letter dated May 14, 1980 from the police headquarters in Kuala Lumpur alleging him to be guilty of three instances of irresponsible conduct relating to his work as an investigating officer. The letter required him to give an explanation against the allegations.

On receipt of this letter, the respondent wrote his reply dated June 7, 1980, giving his explanation to the allegations. It was only after a lapse of more than a year that he was informed (*vide* the police headquarters letter dated August 21, 1981) to the effect that his explanation was not accepted and that as a punishment he was demoted back with immediate effect to his former rank of police constable, plus a total fine of three days' salary. Feeling ashamed and humiliated, he tendered his resignation in June 1983, but his resignation had yet to be accepted. Subsequently, he instituted a suit against the Inspector-General of Police (IGP) and the Government of Malaysia for wrongful dismissal, claiming that the punishments inflicted upon him were null and void because the proceedings were not carried out in compliance with the rules of natural justice.

Ajaib Singh J. who heard the suit in the court below gave judgment for the respondent and the appeal by the appellants (IGP and the Government) came before us. After hearing the arguments of both sides, we dismissed the appeal with costs and, as promised, the following are our reasons which led us to dismiss the appeal.

For being found guilty under a properly conducted disciplinary proceeding, a civil servant will

be liable to any one of these ten punishments, *i.e.*:

(i) warning;
(ii) reprimand;
(iii) fine;
(iv) forfeiture of salary;
(v) withholding of increment;
(vi) stoppage of increment;
(vii) deferment of increment;
(viii) reduction of salary;
(ix) reduction in rank;
(x) dismissal.

(see General Orders, Chapter D, 36).

However, if a Disciplinary Authority thought that a civil servant ought to be punished with either reduction in rank or dismissal, the requirement of the Federal Constitution is that he should be given an opportunity of being heard (Article 135(a)). It is in compliance with this constitutional command that G.O.D. 27-30 were formulated. G.O.D. 27 reiterates the provisions of Article 135(2) of the Federal Constitution in the following words:

"In all disciplinary proceedings under this Part no officer shall be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard."

The General Orders provide two types of disciplinary proceedings to be taken against a civil servant. For a proceeding in which no punishment of reduction in rank and/or dismissal is contemplated, the Disciplinary Authority has to proceed under G.O.D. 29. If, on the other hand, the Disciplinary Authority thinks that the misconduct of a civil servant is so serious as to merit dismissal or reduction in rank, as is the case as regards this appeal, G.O.D. 30 has to be applied. In such cases, paragraph (2) of G.O.D. 30 says as follows:

"The Disciplinary Authority shall, after considering all the available information in its possession that there is a *prima facie* case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing a period of not less than fourteen days a representation containing grounds upon which he relies to exculpate himself."

Two issues are involved in the application of G.O.D. 30 to this case, namely, (1) who is the proper Disciplinary Authority, and (2) having regard to the punishment of reduction in rank imposed on the respondent, whether the show cause letter which did not direct the respondent's attention to the possibility of such punishment has sufficiently complied with the requirements of paragraph (2) of G.O.D. 30. Either of these issues is vital to the case.

As regards the first issue, we are of the view that the learned judge was correct. The respondent was at the material time a probationary police inspector and as such, according to the instrument of delegation of power by the Police Service Commission dated February 18, 1971 (PU(B) 548/75), the IGP was the proper Disciplinary Authority, he being vested with the delegated power to take disciplinary proceedings against "all senior police officers of the rank of probationary inspector up to and including chief inspector" (*vide* item 15 of the Instrument of Delegations). But what happened in this case was that the show cause letter dated May 14, 1980, which was signed by Penolong Pengarah Pengurusan (Tatatertib) on behalf of the IGP, had clearly stated that the letter was sent on the direction not of the IGP but of the Deputy IGP. Although the letter dated August 21, 1981 conveying the punishment appeared to have been written on the instruction of the IGP, in our judgment this does not satisfy the requirement of the G.O.D. 30. The authority informing the punishment must be the same authority that instructs the proceeding leading to the punishment. Oral evidence was led to the effect that the IGP gave his instructions to his deputy to initiate the impugned disciplinary proceeding. In our view, such evidence should not be admitted and if admitted should not be acted upon because it is clear that under section 91 of the Evidence Act no evidence can be given in proof of any matter which is required by law to be reduced to a form of a document and section 92 prohibits the giving of oral evidence to contradict or vary or explain the terms of such document. A show cause letter has to be in the form of a document because paragraph (2) of G.O.D. 30 required a Disciplinary Authority to send to the officer who is subject to a disciplinary proceeding "a statement in writing, prepared, if necessary, with the aid of the Legal Department" Since the letter to show cause clearly said that the Dy. IGP has caused the letter to be sent, on that ground alone the appeal should be dismissed.

As regards the second issue, *i.e.* whether or not there has been sufficient compliance of paragraph (2) of G.O.D. 30, our views are as follows.

Reduction in rank and dismissal are the two most severe punishments that can be imposed upon

a civil servant guilty of misconduct. For this reason, the proceedings with a view to dismissal or reduction in rank have to be slightly different in that the show cause letter must bring to the attention of the civil servant concerned of the contemplated punishments to make him appreciate the gravity of the situation and thus enable him to give a satisfactory explanation as best as he could. This is clear from the wording contained in paragraph (2) of G.O.D. 30, *i.e.* "a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank ..." This phraseology "of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank", however, does not appear in G.O.D. 29 which deals with disciplinary proceedings not meriting punishment of dismissal or reduction in rank.

Looking at the show cause letter dated May 14, 1980, we see nothing in it which shows that the Disciplinary Authority intended or contemplated the punishment of reduction in rank. It is not therefore surprising for the respondent to reply to the allegation of misconduct without assistance of counsel which he said in his evidence he would have done if he had known the gravity of the situation he had to face.

Furthermore, the time lapse between his reply and the punishment clearly gave him hope that whatever punishment to be imposed on him will not be so serious as the one actually imposed. In our view, the Disciplinary Authority here made a fatal mistake which rendered the disciplinary proceedings null and void.

Before concluding this judgment, we wish to make here an observation on the following passage of the judgment of the learned judge in the court below:

"The plaintiff sent a reply to the Deputy Inspector-General of Police on 7 June 1980 giving his explanations on the 3 charges. After considering these explanations and having found that the plaintiff had failed to exculpate himself it was incumbent upon the Inspector-General of Police thereafter to give the plaintiff an opportunity to make a plea in mitigation on punishment. This right of the plaintiff to be heard in mitigation is implied in regulation 27 of the General Orders and in Article 135(2) of the Federal Constitution for otherwise it cannot be said that the plaintiff had been given a reasonable opportunity of being heard. He had to be heard throughout the proceedings from the beginning to the end. Isn't it a fair and reasonable expectation of any person condemned for a wrong that he would be heard in mitigation before any punishment is imposed on him?"

As it stands, this passage appears to be misleading. This passage should be read in the light of the factual situation of this case, wherein the show cause letter dated May 14, 1980 was completely silent as to the contemplated punishment to be imposed at the end of the disciplinary proceedings. Therefore, in order to ensure that the respondent understood and appreciated the seriousness of the proceedings he was facing, the learned trial judge was right in insisting that another chance must be given to him, which he called a plea of mitigation. If, however, the show cause letter had included the proposed punishment, for example, by the inclusion of such statement as "This proceeding is taken against you with a view to dismissal or reduction in rank ..." or "This proceeding is taken under G.O.D. 30 with a view to dismissal or reduction in rank...", or such other phraseology as would give the effect of making the respondent understand the nature of the proceedings and what they would lead to, there is no necessity for the appellants to give another opportunity of being heard before the punishment is imposed.

Apart from his remarks as in the above passage, the learned judge also expressed *obiter* in his judgment which we do not think is correct. This is as follows:

"The only way the position could be rectified was by the institution of fresh disciplinary proceedings in the proper manner."

With respect, we disagree with this observation because the matter having been fought all the way through the court system has already become *res judicata*. It is too late for the appellants to make any rectification.

For the reasons stated above, we dismissed both the appeal and the cross-appeal with costs. The disciplinary proceedings against the respondent being a nullity and his resignation not having been accepted, the respondent has been and still is a probationary police inspector entitled to all emoluments, allowances and benefits of a probationary police inspector from the date of reduction in rank, *i.e.* August 21, 1981.

Appeal dismissed.

Solicitors: *Karpal Singh & Co.*